

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CITIMORTGAGE, INC.,

Plaintiff,

vs.

**DEBRA CLEVELAND, ARTHUR WREN,
UNITED STATES OF AMERICA,
UNKNOWN TENANTS, UNKNOWN
OWNERS, and
NON-RECORD CLAIMANTS**

Defendants.

Case No. 11-cv-835-MJR-SCW

MEMORANDUM AND ORDER

REAGAN, District Judge:

Plaintiff filed its Complaint to Foreclose Mortgage on August 29, 2011, in the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois. On September 14, 2011, Defendant United States of America removed this action to federal court. The United States is now before the Court seeking to dismiss the action, pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim (Doc. 14). More specifically, the United States asserts that in July 2010 the Circuit Court entered a judgment of foreclosure as to the note and mortgage at issue, barring this action under the doctrine of *res judicata* and leaving jurisdiction in the state court.

In opposition to the motion to dismiss, Plaintiff CitiMortgage, Inc., produces documentation establishing that on November 14, 2011, after the United States filed its motion to dismiss, the Circuit Court vacated its judgment of foreclosure and dismissed the state court action without prejudice. *See* Doc. 15-1. The United States did not file a reply.

Plaintiff CitiMortgage has sufficiently established that the state court judgment was vacated and the state court action dismissed without prejudice, clearing the way for this federal court to assume original jurisdiction under 28 U.S.C. § 1346.

IT IS THEREFORE ORDERED that Defendant United States of America's motion to dismiss (Doc. 14) is **DENIED**.

IT IS SO ORDERED.

DATED: January 17, 2012

s/ Michael J. Reagan

MICHAEL J. REAGAN

UNITED STATES DISTRICT JUDGE